

RECEIVED
SDNY PRO SE OFFICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2021 MAR 29 PM 2:37

Joshua Adams Schulte

20 cv 2795 (PGG)(GWG)

Write the full name of each plaintiff.

(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

(Prisoner)

United States of America, Jamey Welch,

Michael Getchey, Mark Burns, Timothy

Valentine, John Barrett, Brian Thiraway,

Michael Sinkovich, and other unknown BOP officers

Do you want a jury trial?

☒ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

☒ Violation of my federal constitutional rights

☒ Other: Bivens, FTCA

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

Joshua A Schulte
First Name Middle Initial Last Name

Josh
State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

79471-054
Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Metropolitan Correctional Center (MCC)
Current Place of Detention

150 Park Row
Institutional Address

New York New York 10007
County, City State Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☒ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

United States of America (FTCA)
First Name Last Name Shield #

Current Job Title (or other identifying information)

Current Work Address

Defendant 2:

County, City State Zip Code
James Welch
First Name Last Name Shield #

Current Job Title (or other identifying information)

Federal Correctional Institute Schuylkill,
Current Work Address Interstate 91 and 901W
Minersville, Pennsylvania 17954
County, City State Zip Code

Defendant 3:

Michael Getchey
First Name Last Name Shield #

Current Job Title (or other identifying information)

Same as #2
Current Work Address

Defendant 4:

County, City State Zip Code
Mark Burns
First Name Last Name Shield #

Current Job Title (or other identifying information)

Same as #2
Current Work Address

County, City State Zip Code

P. 3.1

Defendant #5: Timothy Valentine
Defendant #6: John Barrett
Defendant #7: Brian Thiraway
Defendant #8: Michael Smkovich

Defendants 2-8 employees of the
Bureau of Prisons (BOP):

Federal Correctional Institute Schuylkill
Interstate 91 and 90W
Minersville, Pennsylvania 17954

Defendant #9: Unknown BOP officers that
have not yet been identified.

V. STATEMENT OF CLAIM

Place(s) of occurrence: The events took place at MCL from my cage on unit 10 South, 9 South, the 9 South Sally Port, R4D, and the R4D annex

Date(s) of occurrence: Sunday, March 8, 2020 from approximately 5AM - 9AM

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

On the morning of 3/8/20, at around 5AM, BOP officials began moving around loudly - turning on my light and banging on my door. After awaking from this commotion with no direction or orders, I tried to ignore it and go back to sleep. I eventually hear one of the officers say, "this is Sholet [sic]. He's the one with child porn - they say three levels of encrypted child porn. Let's get him."

The BOP officers then unlocked my cage and rushed me - nearly 20 officers ran into my cage and grabbed me, pushing me down against the mattress. Using excessive force, they twisted my arms behind my back, handcuffed me, and yanked me out of bed. They put sandals on my feet and forcefully dragged me from the cage while shouting incoherently at me. I asked what was going on, but was shoved out into the hall. About ten BOP officials then entered my cage and began to ransack it.

A second set of BOP officials turned me backwards, shoved my head down so I was bowing to them and began to forcefully and aggressively drag me, backwards, through the hall. Two BOP officials held what appeared to be paintball guns at my face. I also noticed all of the BOP officials removed their names from their uniforms. Since they were continually holding my head down in a perpendicular bowing motion, I also could not identify any of the officers. →

They led me backwards; One officer pushing my head down from behind, as others pulled me from the handcuffs around my wrists, cutting me. I tell them they are hurting me, which only excites and encourages them to pull me harder, knocking me down. I fall hard to the ground and bruise my ankles — they then shout and begin to drag me. I stand and then I'm knocked down again. We reach the IRS door and they lead me backwards down the stairs. My vision blurs and I believe I'm suffering a concussion from the second fall.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

Sustained injuries due to excessive force. Shoulder pulled back and dislocated; wrists cut; Multiple falls and dragged across the ground caused bruising; head and neck injuries; exposed to extreme cold with no clothing; no medical treatment received

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

Monetary damages for injuries sustained, punitive damages from each officer who utilized excessive force, violated First Amendment, Fourth Amendment, Fifth Amendment, and Eighth Amendment. Tort damages from United States under FTCA; other compensation for violation of civil rights.

Page 5.1

They drag me backwards through 9S and into the Sally port, into the elevator, and out to R&D. We then move into the R&D annex with the X-ray machine. The BOP officials command me to undergo an xray, but I inform them I do not consent to an xray. They force me to undergo the x-ray at the point of a gun. They then tell me to strip. Ten to fifteen officers watch as I hand them each article of clothing until I am fully nude. They tell me to separate my penis from my sack and show them. They then command me to turn around, squat, and spread my asscheeks so they can examine my rectum.

After the rectal exam, they throw me my clothes. Still cuffed, I'm led back to 10S. When we return, the officers have not yet finished ransacking my cage, so the lead officer, hereafter known as "Hitler", orders the officers to drag me into the recreation cage. This cage has an open window to the outside and it is freezing cold. I tell Hitler it is freezing as I only have a t-shirt and boxers. I request he move me out of the cold. Hitler screams to "Shut the fuck up" and orders his Gestapo to "Shove his mouth up against the wall to shut him up." I protest and tell him I've done nothing wrong and possess the First Amendment right to free speech and ask to be moved from the cold—he informs me that I do not and the Gestapo carry out his orders.

The Gestapo shove my face into the wall so I cannot speak and I cry out in pain. I tell them they are hurting me and beg them to stop so they pull my handcuffed arms up behind my back and a sharp pain intensifies in my shoulders. They then dislocate my shoulder. I cry out in pain again and begin to shiver from the extreme cold. As I am shaking with cold, I catch a glimpse of the officer to my left—he has a glimmer in his eye and is clearly enjoying my suffering.

→

Page 5.2

The BOP Gestapo is ruthless, vindictive, sadistic, and pure evil. They continue to hold me in the extreme cold for nearly 30 minutes even though there are other places to hold me. They finally throw me back into my ransacked cage without any clothes, bed sheets, or blankets. They went through my legal papers and emptied them all on the floor. They confiscated several legal items I possessed including commissary items I purchased. They also confiscated my medication — they left me like this, without bed sheets, proper clothing, or contacting medical for my injuries as I requested.

To my knowledge, the BOP did this only to me, and seemingly because I stand wrongly accused of possession of child pornography; they had only a week prior conducted a humane search of everyone on 105 for the alleged gun thought to be in general population (not on 105 and no probable cause to conduct ~~such~~ ^{such} a thorough and penetrating search). Regardless, the BOP Gestapo was overly aggressive and used excessive force on an individual accused of non-violent crimes who has never received any BOP disciplinary infractions. The BOP Gestapo injured me, and then when I informed them thus, they injured me more — deriving sadistic pleasure from my pain and suffering. They dislocated my shoulder, cut my wrists, gave me a concussion, and bruised my ankles and legs — and all for what?

The BOP Gestapo tried to conceal their illegal acts by removing their name tags and forcing my head down so I could not identify anyone. However, the cameras will prove what they did. Those deranged individuals were simply looking to get their fix for torture and violence — and they must be held accountable for their actions. At the time this occurred, I was in trial — a pretrial detainee never convicted of any crime possessing all inalienable Constitutional rights, state and local protections and basic human rights.

Page 5.3

CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. §§ 1346(b), 2671-80 ("FTCA")

FTCA is designed primarily to remove sovereign immunity of the United States from suits in tort and, with certain specific exceptions, to render government liable in tort as private individual would be under like circumstances. *Richards v. United States*, 369 U.S. 1 (1962). Before bringing a claim in a federal district court under the FTCA, a claimant must first exhaust his administrative remedies by filing a claim for damages with the appropriate federal government entity and must receive a final written determination. 28 U.S.C. § 2675(a). If no final written determination is made by the appropriate federal government entity within six months of the date of the claimant's filing, the claimant may bring an FTCA action in a federal district court. *Id.*

Mr. Schulte immediately filed for administrative remedy after the incident, but received no response. Indeed, there is ~~no~~ effectively no administrative remedy available to anyone at MCC, within the Bureau of Prisons Northeast Regional Office, or indeed anyone in custody under the BOP.

Mr. Schulte filed a civil rights complaint on April 12, 2019, *Joshua Adam Schulte v. Attorney General of the United States, et al.*, 19-CV-3346 (SDNY 2019, Crotty) after exhaustion of administrative remedies and filed subsequent motions containing hundreds of pages of attempts to use the BOP administrative remedy process — none of his legitimate grievances was ever considered for its merits.

Page 54

This Civil action was eventually stayed; a similar motion was then filed in Mr. Schulte's Criminal case, United States of America v. Joshua Adam Schulte, 17 cr. 548 (SDNY 2017, Crotty). See January 15, 2021 Petition for Writ of Habeas Corpus to Modify Conditions of Confinement Pursuant to 28 U.S.C. § 2241 (Dkt. 449).

"The MCC continuously violates the PLRA by (1) formalizing the informal resolution process and never responding to the complaints, (2) never responding within 20 days as required by statute for BP-9s, and (3) deliberately utilizing antiquated technology to obstruct and chill administrative measures. The BOP clearly acted in bad faith by denying administrative remedies." Id. at 14-15.

"Mr. Schulte currently has 17 outstanding BP-8s since October 2018. If you do not receive a reply to your BP-8, you cannot obtain a BP-9. If you cannot obtain a BP-9, you cannot access the administrative remedy process. Ergo, the PLRA is violated." Id. at 16.

"As the BP-9 responses show in exhibits A-L, the MCC managed to respond in a timely manner once. The average response was BP. 25 days — nearly 5 times the 20-day deadline (Ex. A-Z: 140, B-Z: 28, C-Z: 28, D-Z: 104, E-Z: 140, F-Z: 16, G-Z: 126, H-Z: 118, I-Z: 144, J-Z: 143, K-Z: 53, L-Z: 33)... If they appeal to the regional office, the regional office will simply deny it without consideration since MCC never reported the BP-9. Literally every single BP-10 (Ex. *-3) was denied because MCC did not record the BP-9 into their electronic ¹ Sentry¹⁸ system so the Northeast Regional Office simply assumed Mr. Schulte never filed a BP-9 — despite the fact that Mr. Schulte clearly filed a BP-9 as the exhibits illustrate... The lack of an updated,

Page 5.5

electronic system enables the MCC and the BOP to obstruct and chill the administrative remedy process by making the process unavailable." Id.

Mr. Schulte provided over 200 pages of exhibits proving the effective non-existence of any administrative remedy process at MCC. Similarly, Mr. Schulte received no response to his administrative remedy for his FTCA claim. He now proceeds on his FTCA claims in district court. The requested claim amount in his unanswered claim was \$25 million.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

3/16/21
Dated
Joshua A Schulte
First Name Middle Initial Last Name
MCL 150 Park Row
Prison Address
New York New York 10007
County, City State Zip Code

Date on which I am delivering this complaint to prison authorities for mailing:

3/16/21

Josh Schutte #79471054
MCC
150 Park Row
NY, NY 10007



RECEIVED
SDNY PRO SE OFFICE
2021 MAR 29 PM 2:37

ATTN: 20-CV-2795(PGG)(GWG)
Pro Se Intake Unit
United States District Court
500 Pearl Street
Room 200
New York, New York 10007

USMP3
SDNY

